

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x Case No.: 22-cv-03011 (VSB)

CARLOS HERNANDEZ,

Plaintiff,

ANSWER TO COMPLAINT

-against-

YOURS WHOLESOME FOODS, INC.,
NARAYANBHAI PATEL, RAMANLAL PATEL, and
RONAK PATEL,

Defendants.

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Defendants, YOURS WHOLESOME FOODS, INC., YOURS WHOLESOME FOODS,
INC., NARAYANBHAI PATEL, RAMANLAL PATEL, and RONAK PATEL, by their attorney,
IRA LEVINE, ESQ., as and for their Answer to the Complaint:

RESPONDING TO “NATURE OF ACTION”

1. Deny the allegations contained in paragraphs 1-18 of the Complaint.

RESPONDING TO “JURISDICTION AND VENUE”

2. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 19 and 20 of the Complaint.

RESPONDING TO “PARTIES”

3. Deny knowledge or information sufficient to for a belief with respect to the allegations contained in paragraphs 22, 23 of the Complaint.

4. Deny the allegations contained in paragraphs 22-24, 31-34 of the Complaint.

RESPONDING TO “STATEMENT OF FACTS”

5. Deny knowledge or information sufficient to for a belief with respect to the allegations contained in paragraphs 35, 38, 76 of the Complaint.

6. Deny the allegations contained in paragraphs 36, 37, 39-75, 77-80 of the

Complaint.

RESPONDING TO “FIRST CAUSE OF ACTION”

7. Defendants repeat and reallege each and every allegation contained above in paragraphs “1” through “6” of this Answer with the same force an effect as if hereinafter set forth at length.
8. Deny the allegations contained in paragraphs 82-88 of the Complaint.

RESPONDING TO “SECOND CAUSE OF ACTION”

9. Defendants repeat and reallege each and every allegation contained above in paragraphs “1” through “8” of this Answer with the same force an effect as if hereinafter set forth at length.

10. Deny the allegations contained in paragraphs 90-94 of the Complaint.

RESPONDING TO “THIRD CAUSE OF ACTION”

11. Defendants repeat and reallege each and every allegation contained above in paragraphs “1” through “10” of this Answer with the same force an effect as if hereinafter set forth at length.

12. Deny the allegations contained in paragraphs 96, 97 of the Complaint.

RESPONDING TO “FOURTH CAUSE OF ACTION”

13. Defendants repeat and reallege each and every allegation contained above in paragraphs “1” through “12” of this Answer with the same force an effect as if hereinafter set forth at length.

14. Deny the allegations contained in paragraphs 99-103 of the Complaint.

RESPONDING TO “FIFTH CAUSE OF ACTION”

15. Defendants repeat and reallege each and every allegation contained above in

paragraphs "1" through "14" with the same force an effect as if hereinafter set forth at length.

16. Deny the allegations contained in paragraphs 105-108 of the Complaint.

RESPONDING TO "SIXTH CAUSE OF ACTION"

17. Defendants repeat and reallege each and every allegation contained above in paragraphs "1" through "16" of this Answer with the same force an effect as if hereinafter set forth at length.

18. Deny the allegations contained in paragraphs 110-113 of the Complaint.

RESPONDING TO "SEVENTH CAUSE OF ACTION"

19. Defendants repeat and reallege each and every allegation contained above in paragraphs "1" through "18" of this Answer with the same force an effect as if hereinafter set forth at length.

20. Deny the allegations contained in paragraphs 115-119 of the Complaint.

RESPONDING TO "EIGHTH CAUSE OF ACTION"

21. Defendants repeat and reallege each and every allegation contained above in paragraphs "1" through "20" of this Answer with the same force an effect as if hereinafter set forth at length.

22. Deny the allegations contained in paragraphs 121-123 of the Complaint.

AS TO ALL AFFIRMATIVE DEFENSES

23. At all times, Defendants acted properly. Since Defendants have not yet availed themselves of their right to discovery, it may not fully know the circumstances of the alleged incidents described in the complaint. Defendants hereby notify Plaintiff that until Defendants have availed themselves of their right to discovery, they cannot determine whether or not each of the below-stated Affirmative Defenses will, in fact, be asserted at trial. Such defenses, however, are

raised as of right and to avoid the waiver of any such defenses. Defendants reserve the right, upon completion of their investigation and discovery, to assert such additional defenses as they deem appropriate.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

25. This action is barred by the doctrines of waiver and estoppel.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

26. Plaintiff cannot recover liquidated damages under FLSA because Defendants acted in good faith and believed that their conduct did not violate the FLSA.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

27. The acts and omissions of Defendants, if any, were made in good faith and based upon reasonable grounds that such acts or omissions did not violate and were in conformity with all applicable statutes, regulations, orders, rulings, approvals or interpretations of same as promulgated by The United States Department of Labor, The New York State Department of Labor, and all other applicable departments and agencies having jurisdiction therefor.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

28. The Complaint is barred, in whole or in part, by the doctrine of payment.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

29. The Complaint is barred, in whole or in part, by virtue of the doctrine of release.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

30. Defendants are entitled to a set-off with respect to the monies paid for any hours that Plaintiff was not actually working.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

31. The causes of action herein have been waived and/or barred by reason of Plaintiff's failure to give proper and timely notice to Defendants of his claims.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

32. The Complaint is barred, in whole or in part, by virtue of the doctrine of collateral estoppel.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

33. If Defendants are found to have failed to pay the appropriate compensation, any such violations are de minimis.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

34. This Court does not have, should decline to exercise, supplemental jurisdiction over some or all of the state law claims asserted by Plaintiff.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred because some or all of the Defendants were not Plaintiff's "employer" as such term may be defined under applicable federal or state laws.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

36. Liquidated damages are not fully available for both FLSA claims and NY Labor Law claims.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

37. Plaintiff cannot prevail in the absence of any documentary evidence to corroborate allegations of overtime or the other allegations herein.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

38. Plaintiff's claims are barred by laches.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

39. The claims are barred by the laches of Plaintiff.

WHEREFORE, Defendants demand judgment dismissing the Complaint and awarding Defendants the costs and disbursements of this action.

Dated: Massapequa, New York
June 2, 2022



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